TIO TEK HUAT

v.

PENDAKWA RAYA

HIGH COURT, KUALA LUMPUR
DATUK L.C. VOHRAH J.
[CIVIL SUIT NO. 42-73-91]
15 APRIL 1993

CRIMINAL LAW & PROCEDURE: Charge under s. 467 Penal Code - Whether elements of the offence proved - Whether appellant rightly convicted.

The appellant, at the end of the prosecution case, on his electing not to give any evidence or explanation, was convicted on an amended charge for an offence under s. 467 of the Penal Code for having in his possession valuable securities in the form of two credit cards knowing them to be forged and intending fraudulently or dishonestly to use them as genuine.

It was in evidence that at the material time the cards had either been cancelled or had expired.

Held:

[1] The credit cards (Exhibits P2 & P6) could not as a matter of law have been considered as valuable securities on the date when the appellant was found in possession of them because P2 had lost its validity and P6 had been cancelled with the result that no right or liability could properly have accrued in respect of both these documents.

[2] The evidence of PW1, PW2, PW5 and PW6 showing that goods had been purchased with P2 should not have been admitted because there was no suggestion whatsoever that it was the appellant who had used the card for the purchases and the prejudicial effect of this evidence on the mind of the learned Judge certainly outweighed its probative value.

[3] The essential ingredient of the charge had not been satisfied by the prosecution evidence and there was no case for the appellant to meet on the amended charge.

[Appeal allowed. Conviction set aside].

Legislation referred to:
Penal Code, ss. 467, 474

Other sources referred to:
Ratanlal & Dhirajlal's Law of Crimes, 23rd Edn., p. 81

For the appellant - Mohamed Noor bin Don; M/s. Mohamed Noor Don & Co.

For the respondent - Shamsul Suleiman, DPP

JUDGMENT

L.C. Vohrah J:

At the end of the prosecution case on his electing not to give any explanation or evidence, the appellant was on 12 December 1991 convicted on an amended charge for an offence under s. 467 of the Penal Code punishable under s. 474 for having in his possession valuable securities in the form of two credit cards knowing them to be forged and intending fraudulently or dishonestly to use them as genuine. He was sentenced to 6 years' imprisonment.

Briefly the facts of the case are as follows. The appellant was arrested together with another person on 8 May 1991 at about 9.30 pm near Yaohan Supermarket in Jalan Kelang Lama, Kuala Lumpur. On a search of his person eight credit cards were recovered. Of these five belonged to him and of the remaining three, two were forged credit cards which were made the subject of the present charge, namely Visa Credit Card No. 4564 4250 8040 1820 in the name of one Ooi Boon Chai issued by Southern Bank Bhd. (P2), and Visa Gold Card No. 4966 4500 0001 7583 in the name of one Koo Yew Kang issued by Hongkong Bank (P6). Prior to the appellant's arrest P2 had been used to secure the purchase of goods - on 27 April 1991 to the value of RM243; on 5 May 1991 to the value of RM268; and on two occasions on 6 May 1991 to the value of RM675.80. In none of these transactions was the appellant identified as the purchaser and in fact there was evidence to suggest that for the purchase effected on 5 May the person using P2 was a woman. It was in the evidence of PW8, a bank clerk from the Hongkong Bank, that P6's expiry date was June 1991 and that it had in fact been cancelled on 7 May 1991 and that Koo Yew Kwang, to whom it belonged, had been informed of

the cancellation. PW8 also testified that after the date of this cancellation the card-holder would not have been liable because any transaction to be effected on the basis of P6 would be rejected by the CATS machine so that it was considered a valueless document. It was in the evidence of PW10 that the card P2 itself which had been effectively used to purchase goods on four separate occasions was a genuine card issued by Southern Bank but that the particulars in the card such as the card number and the name Ooi Boon Chai had been forged because they did not appear in the bank's credit card accounts. He testified further that the expiry date on this forged card was given as the month of November 1990 indicating that even if the document had been a genuine one it was not valid for use to purchase goods after 30 November 1990. PW12, the bank officer from the fraud unit of Malayan Banking Credit Card Centre stated that the sales drafts P19, P20 and P21 upon which P2 was printed out had been supplied by Malayan Banking Bhd. and that going by the expiry date on P2 and the sales drafts, the sales transactions which were effected should not have taken place and that the cashiers had defaulted in honouring the card as it was invalid at the time. I, accordingly, agree with Counsel for the appellant, that P2 and P6 *per se* could not therefore, as a matter of law, have been considered as valuable securities on the date when the appellant was found in possession of them at the time of his arrest because P2 had lost its validity and P6 had the day before been cancelled with the result that no right or liability could properly have accrued in respect of both these documents (see Ratanlal & Dhirajlal's Law of Crimes, Twenty-third Ed. p. 81). As this essential ingredient had not been satisfied by the prosecution evidence there was really no case for the accused to meet on the amended charge. Quite apart from this, I am of the view that in this particular case the evidence of PW1, PW2, PW5 and PW6 showing that goods had been purchased with P2 should not have been admitted because there was no suggestion whatsoever that it was the appellant who had used the card for the purchases and the prejudicial effect of this evidence on the mind of the learned sessions Judge certainly far outweighed its probative value. In the event, I must allow the appeal and set aside the conviction and sentence which I hereby do.